

WAR REVENUE ACT CONSTITUTIONAL.

Justice Peckham of the United States Supreme Court

Renders an Important Opinion as to the Validity of the Law.

The Provisions Relative to Affixing of Stamps Upon Sales and Contracts Applies Not Only to Stock Exchanges, But to Live-Stock Yards as Well, the Principle Being the Same in all Cases.

WASHINGTON, April 3.—Much interest was manifested by lawyers and others in the decision of the cases in the United States Supreme Court to-day, involving the validity of the war revenue law. The opinion was handed down by Justice Peckham, who orally announced only a bare summary of the written document. The opinion, as prepared for preservation, took up the various phases of the subject, holding the law constitutional as applied, not only to stock exchanges, but to live-stock yards as well, the principle being the same in all cases.

The cases were those of James N. Young vs. James Ames, United States Marshal; petition for habeas corpus by George R. Nichols, petitioner, Edwin S. Skillen, appellant, vs. the Marshal, and Charles Hingweren, plaintiff in error, vs. the United States. The cases all came from the Chicago Federal courts.

These cases involve especially the invalidity of the tax provided by the war revenue Act upon sales and contracts to sell merchandise upon exchanges, Boards of Trade or similar places. The war revenue Act requires a memorandum to be made of the transaction, and a stamp affixed, the amount of which is measured by the standard of the cases of George R. Nichols, appellant, vs. Nichols, petitioner, and of Skillen, appellant, present all the phases involved in stock transactions on the Board of Trade in Chicago. The case of G. W. Hingweren involves the question whether the Union Stockyards of Chicago is an exchange or similar place, making sales taxable.

The court in its opinion sustained the validity of the Act, and held also that the stockyards is a place similar to an exchange, making its transactions liable to the tax.

The case was argued by ex-Secretary Carlisle and Mr. Robins of Chicago for the petitioners, and by J. B. K. Richards, Solicitor General, for the Government. Carlisle contended that the tax on sales of exchanges is a direct tax, first, because it is a tax upon the property sold, and second, because the tax cannot be shifted, but must be paid by the seller on the exchange. It was also insisted that if the tax is an indirect tax it lacks uniformity because not imposed upon all such sales whenever made.

The point was also made that, if an indirect tax, it is a stamp tax on documents, and that Congress had no power to require a written memorandum to be made upon transactions within a State for the purpose of taxing such memoranda.

The court in its opinion carefully discusses all these objections, and overrules them. It holds that it is not a direct tax, but a duty or excise laid upon the privilege, opportunity and facility offered at Boards of Trade or exchanges for the prosecution of the business mentioned in the Act.

"It is," the court further says, "not a tax upon the members of the exchange, nor upon the membership therein, nor is it a tax upon sales generally. The Act limits the tax to sales at any exchange or Board of Trade or other similar place, and its fair meaning is to impose a duty upon those privileges or facilities there found and made use of."

The exceptional facilities offered at such places affords, the court says, a just ground for classification for purposes of taxation by Congress of transactions there. The flexible character of adapting it to changing conditions is distributed by the courts, it distinctly holds that in order to tax a privilege or facility inured to it is not necessary that it should be created by the Government; the requirement of a memorandum is upheld because it is necessary for the collection of a tax. The tax is pronounced uniform because it applies to all who use the facilities of the exchange, and the fact that the exchange of facilities incident to the transaction of business at Boards of Trade and similar places.

Referring to the stock yards case, Justice Peckham said: "A perusal of the facts contained in the record of the case shows that these yards serve all the purposes of an exchange or a Board of Trade, and they amount in substance to the same thing. The differences existing between them are insubstantial insofar as this point is concerned."

In speaking of the general powers of Congress as to taxation, Justice Peckham said: "In searching for proper subjects of taxation to raise moneys for the support of the Government, Congress must have the right to recognize the manner in which the business of the country is actually transacted; how, among other things, the exchange of commodities is effected; what facilities for the conduct of business exist; what is their nature and how they operate; and what, if any, practicable and recognizable distinction there may be between a transaction which is effected by means of using certain facilities and one where such facilities are not available or by the parties to the same kind of a transaction."

"Having the power to recognize these various facts, it must also follow that Congress is justified, if not compelled, in framing a statute relating to taxation to legislate with direct reference to the existing conditions of trade and business throughout the country, and to the manner in which they are carried on."

"The Chicago Board of Trade is treated in the opinion as a type of Boards of Trade all over the country, the size of the chief institution only serving to emphasize its importance."

"It is common knowledge that these exchanges encourage and promote honest and fair dealing among their members; that they provide penalties for the violation of their rules in that regard, and that contracts between members relating to business on the exchange have the advantage of the sanction provided by the exchange for such purposes."

"Nor is there any doubt that these exchanges facilitate exchange of purchase and sale, and it would seem that such facilities or privileges, even though not granted by the Government or by a State ought nevertheless to be recognized as existing facts, and to be subject to the judgment of Congress as fit matters for taxation."

"The tax," he said, "is not a direct tax within the meaning of the Constitution, but it is in the nature of a duty or excise. The amount of such tax when imposed in a case like this may be increased or diminished by the extent to which the privilege or facility is used, and it is fixed in this Act by the value of the property transferred by means of using such facilities; but this does not make the tax a direct tax. We do not see that any material difference exists when the sale is for future delivery. The thing agreed to be sold is the same whether for immediate or future delivery."

"At the point of discrimination it was remarked that 'a purchase occurs whenever a sale is effected, and to say that a purchaser at an exchange sale must be taxed for the facilities made available in making the purchase, or else that the tax is not a direct tax, is simply to insist upon doubling the tax. Nor is it necessary to tax the use of the privilege under all circumstances in order to render the tax valid upon its use in particular cases. We see no reason why it should be necessary to tax the privilege whenever it is used for any purpose or else not to tax it at all. It is not in its nature indivisible."

"In holding that the tax under consideration is a tax on the privilege used in making sales at an exchange, we thereby hold that it is not a tax upon the exchange, but a tax upon a statute upon which the stamp is to be placed. The Act does not assume in any manner to interfere with the laws of the State in relation to the contract of sale."

"Although Congress might have adopted some other means for collecting the tax which would prove less troublesome or annoying to the taxpayer, there can surely be no reason for holding that the method set forth in the Act renders the tax invalid. The method must be a question for Congress alone."

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"In the matter of the petition for a writ of habeas corpus, the petition was denied, while in the other cases the judgments of the lower courts were affirmed."

CHICAGO, April 3.—Inquiry among those familiar with Board of Trade methods developed the fact that no attempt has been made to evade the revenue tax on the Chicago Exchange, but that there has been a question as to whether brokers must pay a tax on every trade made in the pit or whether a system of transfers could eliminate a number of intermediate transactions, the tax falling upon the ultimate seller, with whom the trade is finally checked at the end of the day. Every trade that becomes a matter of record on the books of any Board of Trade or exchange pays the tax. The only question is of transferring of trades between brokers.

The court in its opinion sustained the validity of the Act, and held also that the stockyards is a place similar to an exchange, making its transactions liable to the tax.

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CHEERING WORDS FROM GEN. OTIS.

Rebel Army Defeated, Discouraged and Scattered.

Insurgents Returning to Their Homes in the Cities and Villages.

Present Indications Denote the Filipino Government in a Perilous Condition—Defeat of Aguinaldo's Forces North of Manila Has a Distressing Effect on Other Insurrectionists.

WASHINGTON, April 3.—The following cablegram was received at the War Department early this morning: "Manila, April 3, 1899. 'Adjutant General, Washington: Present indications denote insurgent government in perilous condition, its army defeated, discouraged and scattered. Insurgents returning to their homes in cities and villages between here and points north of Malolos, which our reconnoitering parties have reached, and desire protection of Americans. News from Visayan Islands more encouraging every day.'"

The cable, dated February 7th, which reported Egger, First Nebraska, killed in error. No such man, OTIS."

War Department officials were pleased by the cheering dispatch received from General Otis to-day. It contained a great deal of encouragement to the army and the people who know General Otis well say he is not a man to take a roseate view of the situation unless there is reason for it. It is argued at the department that the Filipinos have never been used to the kind of warfare that the Americans have given them, and they are now aware that it will be impossible for them to accomplish anything by fighting.

While there is disappointment because the movement for the capture of a large force of the Filipinos was not successful, it is not believed that the pressing of the insurgents steadily toward the north, capturing their capital and driving them from place to place, has had a very discouraging effect upon the natives who have been following Aguinaldo.

It is evident by the reference which General Otis makes to reconnoitering parties that he is having the country thoroughly covered, and that the information which they are giving him is the basis of the dispatch received to-day. It is believed that desertions will soon deplete the army of Aguinaldo to little or nothing.

The portion of the dispatch relating to the Visayas referring to the operations of which Iloilo is the base. The group includes Panay, Bohol, Cebu, Negros and others of less importance. The rebellion against the United States authorities was not very serious in these islands, being stirred up by emissaries of Aguinaldo. The constant defeat of Aguinaldo's forces north of Manila has, no doubt, had a depressing effect on other insurrectionists.

NATIVES RETURNING TO THEIR HOMES. MANILA, April 3.—(6:30 p. m.)—The natives continue returning to their homes. They are coming in all along the American lines, and many of them, seeing the promises of good treatment, are fulfilled, are inducing their relatives to their homes.

Major General Elwell S. Otis, commander of the American military forces, has received the following message: "Hearty congratulations on the most magnificent work of the army."

"DREWY." The Philippine commission, the last member of that body, Colonel Charles Denby, former Minister to China, having arrived here, will now discuss the situation. The Commission is in possession of a speedy restoration of peace, believing hostilities will soon be confined to the habitual revolutionists.

Brigadier General Harrison Gray Otis calls for home on board the transport Sherman to-day. He says he believes the insurrection has received its death blow.

The Sherman will also have on board the sons of Secretary John Hay of the State Department and Senator Hale of Maine, who have witnessed much of the fighting with the army, and the bodies of Colonel Hans C. Egbert of the Twenty-second Infantry and others who have lately fallen in battle.

General Wheaton has assumed command of the brigade lately commanded by General Otis. The Third and Second Regiments, of General Wheaton's command, are returning to this city.

CONGRESSMAN ROBERTS. Rev. Hiff Advocates His Expulsion From the Lower House.

NEW YORK, April 3.—The Rev. Dr. Thomas C. Hiff of Salt Lake addressed the Methodist preachers' weekly meeting in this city to-day on "The Present Situation in Utah."

Dr. Hiff has been the Superintendent of the Methodist Mission in Utah for twenty-five years. He is making his present trip as the Chairman of a committee representing the Evangelical churches of Utah, to present a petition to the next House of Representatives of Brigham H. Roberts. In the course of his address Dr. Hiff said:

"If Brigham H. Roberts is permitted to sit in Congress it will be interpreted in every Mormon hamlet as the fulfillment of the prophecy of the fulfillment of Brigham Young's prophecy, and also as nationalizing polygamy. The Mormons will redouble their energies. Already they may be said to hold the balance of power in Idaho and Wyoming, and they are very strong in Nevada, Arizona and in Southwest Colorado. The other day the wife of a Senator from a State adjoining Utah, herself a Methodist, was asked to use her influence on his crusade. She decided that she could do nothing. That shows the Mormon influence in politics."

"We shall ask that Congress shall expel Roberts. We first petitioned that he be not received, but after conferring with Senator Edmunds and others we thought that the proper procedure is to expel him."

Sullivan Defeats Kerwin. NEW YORK, April 3.—At the Greenwood Athletic Club to-night "Spikes" Sullivan defeated George (Mysterious) Kerwin in a boxing match. The moment the men stepped into the ring they got together, Kerwin letting his arms fly like flails, without any attempt at science. This puzzled "Spikes" a good deal, but he got his man's measure, and soon was plainly a winner, hitting Kerwin freely. The latter wasted his strength and weakened greatly. In the sixth and seventh rounds Sullivan smashed in and finally, with a right-hand smash on the jaw, knocked Kerwin helpless, after fifty-five seconds of fighting in the seventh.

Florida Senatorship. TALLAHASSEE (Fla.), April 3.—The General Assembly which meets here tomorrow will choose a successor to Senator Manuel Pascoe. It is believed Senator Pascoe will succeed himself, although considerable opposition has been expressed. During the afternoon the gossip is that in case Senator Pascoe is not re-elected on an early ballot the place will be given to Governor Bloxham. The session of the Legislature will continue sixty days, and an enormous amount of work is awaiting disposition.

Hosts of Children at White House. WASHINGTON, April 3.—Easter egg rolling, a distinct feature of capital city life, brought hosts of children to the White House grounds to-day to enjoy the hospitality of the President's private garden. During the afternoon the Marine Band gave a concert for the special pleasure of the army of little ones who had gathered to roll the eggs down the grassy lawn. President and Mrs. McKinley enjoyed the rollicking fun of the children from the White House portico.

Great Northern Railway. CHICAGO, April 3.—A local financial news agency to-day says: "It is understood that the Great Northern Railway will cut its promised 'melon' on or about April 15th, and it will consist of a distribution of \$5,000,000 of surplus in the treasury by a stock dividend of about five shares of stock to each 100 shares. It is also reported that negotiations are on for relations between the Great Northern and the Northern Pacific companies, if not an actual merger."

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TRIBUTE TO DEAD SOLDIERS. PRESIDENT McKinley ISSUES AN EXECUTIVE ORDER. Extolling the Patriotism of Those Who Fell While Fighting for Their Country.

WASHINGTON, April 3.—The President to-day issued the following executive order: "It is fitting that in behalf of the nation tributes of honor be paid to the memories of the noble men who lost their lives in their country's service during the late war with Spain. It is more fitting, inasmuch as in consonance with the spirit of our free institutions and in obedience to the most exalted promptings of patriotism, those who were sent to other shores to do battle for their country's honor during the late war with Spain. It is more fitting, inasmuch as in consonance with the spirit of our free institutions and in obedience to the most exalted promptings of patriotism, those who were sent to other shores to do battle for their country's honor during the late war with Spain. 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